

Steve Zissou & Associates
Attorneys at Law

42-40 Bell Boulevard, Suite 302
Bayside, New York 11361

Office (718) 279-4500
Facsimile (800) 761-0635

Email: stevezissou@stevezissouesq.com

October 15, 2015

By ECF
Hard copy to follow by mail

The Hon. Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

***Re: Ziming Shen v. United States,
15 Cv. 5840, 5935 (DLI)
12 Cr. 68 (DLI)***

Dear Judge Irizarry:

As counsel for Ziming Shen I write to object to this Court's sua sponte order entered on October 14, 2015, which deemed Mr. Shen's motion for a writ of error *coram nobis* to be a motion to reduce, vacate, or correct a sentence pursuant to 28 U.S.C. § 2255.

As noted in the coram nobis papers submitted by Mr. Shen:

As a general rule, restitution and forfeiture, because they are non-custodial portions of the sentence, cannot be challenged by a motion pursuant to 28 U.S.C. § 2255. *See Kaminski v. United States*, 339 F.3d 84 (2d Cir. 2003). But relief is available to a defendant harmed by an illegal restitution award or an illegal forfeiture order through a writ of coram nobis. *See Mansour v. United States*, 2015 U.S. Dist. LEXIS 46884 (S.D.N.Y. 2015); *Carnesi v. United States*, 933 F. Supp. 2d 388 (E.D.N.Y. 2013); *Ewan v. United States*, 2012 U.S. Dist. LEXIS 120073 (E.D.N.Y. 2012); *see also Kaminski*, 339 F.3d at 89-91 (Calabresi, J., concurring).

Memorandum of Law in Support of Petition for a Writ of Coram Nobis, dated, October 9, 2015 ([ecf](#) #1, at 8, [ecf](#) #180 at 8)) (footnote omitted).

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Here, since Mr. Shen is not in custody he has properly sought a writ of coram nobis to vacate the restitution and forfeiture orders incorporated into his judgment. As shown in the papers submitted in support of his coram nobis petition, Mr. Shen has met the standards for establishing his entitlement to coram nobis relief pursuant to 28 U.S.C. § 1651(a).

Accordingly, we respectfully request that this Court vacate and/or rescind its October 14, 2015 order and consider Mr. Shen's petition in the manner in which it was intended.

Respectfully submitted,

Steve Zissou
Attorney for Ziming Shen

--Of counsel--
Nathan Dershowitz
Amy Adelson